IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.309 OF 2005

Dhimant V. Mehta and others Petitioners

versus

Canara Bank, Mumbai and others Respondents

Mr.Shailesh Shah i/by Devendra Sharma for petitioners.
Mr.Umesh Shetty i/by Umesh Shetty & Co; for respondent no.1.
Mr.Pankaj Thatte i/by Tandel & Co.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.
DATE : 7th March 2005
PC :

1. Heard Mr.Shah in support of this petition. Mr.Shetty appears for respondent no.1 contesting respondent. Respondent no.1 bank had a claim against one Mukesh Kumar Udani who was their borrower. He having not cleared the loan to the tune of Rs.15.00 lakh, they issued necessary demand notice in pursuance of the order passed by the Recovery Officer. The demand notice was served on the flat owned by Mr.Mukesh Kumar Udani on 27th June 2002. Thereafter the petitioners herein have entered into the fray and contended that they have purchased the flat from brother of Mr.Mukesh Udani. At all material times the flat stood in the name of Mr.Mukesh Udani and

therefore, respondent no.1 bank which were seeking recovery of their dues, proceeded to issue necessary notice. Mr.Shah appearing for petitioners submitted that the petitioners had a claim since they were claiming through a brother and other family members of Mr.Mukesh Udani who also are stated to be having claim in that flat. That is not so as per the record of the society and in any case all those transactions are subsequent to the service of notice. The notice as served relates back as provided under Rule 51 of the IInd Schedule of Income Tax Act and Section 29 of Recovery of Debts due to Financial and Institution Act, 1993 lays down that the provisions of IInd Schedule of Income Tax Act apply as far as possible in the matter of recovery of dues. In our view, therefore, the Tribunal was right in taking the view that the submissions of the petitioners were nothing but an afterthought and could not vitiate the action taken by respondent no.1 bank. There is no reason to interfere in the order impugned. Petition is dismissed.

2. Civil Application No.566 of 2005 accordingly stand dismissed.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)